IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

ST.Rev..No. 183 of 2004

ORDER DATED 23.1.2004 IN TA.197/2003 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE

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REVISION PETITIONER/RESPONDENT/ASSESSEE:

M/S. JANATHA WOOD CRAFTS,
ONDEN ROAD,
AZHIKKODE, KANNUR
REPRESENTED BY ITS MANAGING PARTNER
A. ERAMULLAN KUTTY.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

RESPONDENT/APPELLANT/REVENUE:

STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER MR.VINOD CHANDRAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

S.T.Rev.No.183 of 2004

Dated, this the 23rd day of November, 2007

ORDER

H.L.Dattu, C.J.

The petitioner is a firm and it is registered under the provisions of the Kerala General Sales Tax Act, 1963 ('the Act' for short). The petitioner firm is engaged in the manufacture and sale of block board and block board frames. In its manufacturing activity, the petitioner firm purchases and consumes soft wood.

(2) The notification issued by the State Government under SRO No.403/1994 grants exemption from payment of purchase tax under Section 5A of the Act provided the end product is exigible to the sales tax.

(3) In the returns filed for the assessment year 2000-01, the assessee had claimed exemption from payment of purchase tax relying upon SRO No.403/1994. The claim so made by the assessee was rejected by the assessing authority.

(4) Aggrieved by that order the assessee had filed appeal before the first appellate authority. During the interregnum, persons similarly placed like the assessee had approached the State Government to issue appropriate clarification with regard to the exemption available to the assessee and to the other assessees similarly situated like the petitioner who also manufactures block board and block board frames. The Under Secretary to the State Government has issued a clarification by his order dated 8.6.2002, clarifying that soft wood purchased for manufacture of block board and block board

frames is also eligible for exemption under SRO No.403/1994.

(5) Relying upon the clarification so issued by the Under Secretary, the first appellate authority had allowed the assessee's appeal and further had directed the assessing authority to grant exemption on the purchase turnover of the soft wood purchased by the assessee. The State, as usual, had carried the matter in appeal before the Tribunal in T.A.No.197 of 2003. The Tribunal by its order dated 23rd January, 2004 is of the view that the clarification issued by the Under Secretary to the State Government is not in the nature of a notification issued under Section 10 of the Act and therefore, the first appellate authority could not have relied upon the said clarification. Apart from this, the Tribunal is also of the opinion that the clarification issued by the Under Secretary is not binding on them. Therefore, had allowed the State's appeal and had confirmed the orders passed by the assessing authority. Being aggrieved by the findings and conclusions so reached by the Tribunal in T.A.No.197 of 2003 dated 23.1.2004, the assessee is before us in this sales tax revision.

(6) The assessee has framed the following questions of law for our consideration and decision, They are as under:

> "(1) Was the Appellate Tribunal correct in law in not holding that the revision petitioner is entitled for exemption from purchase tax under Section 5A of the KGST Act for the turnover on the soft wood consumed for the manufacture of block board considering SRO No.403/99 as also clarificatory letters dated 8.6.2002 and 29.6.2002 from the Government?
>
> (2) Has the appellate Tribunal rightly applied the dictum of the case cited 90 STC 49 laid down by the Honourable

> Supreme Court in rendering the turnover of soft wood purchased by the revision petitioner unqualified for exemption from purchase tax U/S.5A?"

(7) The State Government has issued the notification SRO No.403/1994 in exercise of its powers under Section 10 of the Act. By the said notification, the State Government has granted exemption from payment of purchase tax on certain commodities such as soft wood, etc. if it is used in the manufacture of plywood, tea chests, wooden crates, wooden cable drums, veneers, etc. and further end products so manufactured are exigible to sales tax on the first point of sale.

(8) The petitioner being of the opinion that the block board and block board frames manufactured by them is more or less similar to the manufacture of plywood, tea chests, wooden crates, etc., had sought for exemption from payment of purchase tax in the annual returns filed for the assessment year 2000-01.

(9) The assessing authority taking into consideration the products mentioned in the notification, has come to the conclusion that the State Government has exempted purchase of soft wood from payment of purchase tax provided it is used in the manufacture of plywood, tea chests, wooden crates, etc. and not in the case of block board and block board frames.

(10) As we have already noticed, the petitioner and persons similarly placed had approached the State Government to issue an appropriate notification clarifying that the manufacturers of block board and block board

frames are also eligible and entitled to the exemption granted under SRO No.403/1994. The Under Secretary to the State Government by his order dated 8.6.2002 has clarified that the manufacturers of block board and block board frames are also eligible and entitled to claim exemption under SRO No.403/1994. The clarification issued by the Under Secretary to the State Government is as under:

> "I am directed to invite your attention to the letter cited as to inform that if the raw materials come under the purview of the soft wood, the SSI Unit – qualifies for tax exemption provided the other requirements are satisfied under the notification concerned."

(11) The first appellate authority, keeping in view the purport of the notification SRO No.403/1994 and the clarification issued by the Under Secretary to the State Government dated 8.6.2002, had allowed the assessee's appeal and had directed the assessing authority to grant exemption to the petitioner industry on its purchase turnover of the soft wood used for the manufacture of block board and block board frames.

(12) The Tribunal, in appeal filed by the State, has come to the conclusion that the State Government can issue appropriate notification in exercise of its powers under Section 10 of the Act granting exemption from payment of tax under the Act. The clarification issued by the Under Secretary is not in the nature of a notification issued under Section 10 of the Act and therefore, the first appellate authority could not have relied upon such clarification issued by the Under Secretary to the Government while allowing the appeal filed by the assessee. Further, the Tribunal has observed that the clarification issued by the Under Secretary to the Government is not binding on

the Tribunal. We cannot take exception to the finding and conclusion reached by the Tribunal.

(13) Taking into consideration the pathetic situation of the assessee and persons similarly placed, the State Government has issued a notification SRO No.593/2004 dated 7th June, 2004 which has come into effect from 1st of January, 2000. The said notification grants exemption on the purchase turnover of soft wood, if the same is used in the manufacture of block board and block board frames. The State Government has also issued yet another notification SRO No.689/2007 dated 6th July, 2007 which has been given retrospective effect from 1st of April, 1994 to 31st December, 1999.

(14) In view of these notifications, we are of the opinion that the State Government has clarified that the manufacturers of block board and block board frames who purchases and consumes soft wood are eligible and entitled for exemption under the notifications SRO No.403/1994, SRO No.593/2004 and SRO No.689/2007.

(15) In view of the notifications so issued by the State Government, in our opinion, it is now difficult for us to sustain the orders passed by the Tribunal in T.A.No.197 of 2003 dated 23.1.2004.

(16) Accordingly the following:

Order

i) The Sales Tax Revision is allowed.

ii) The orders passed by the Tribunal in T.A.No.197 of 2003 dated 23.1.2004 for the assessment year 2000-01 is set aside.

iii) The matter is now remanded back to the assessing authority to redo

the assessment in accordance with law and in the light of the notifications SRO No.403/1994, SRO No.593/2004 and SRO No.689/2007 as expeditiously as possible, at any rate within six months from the date of receipt of a copy of this Court's order.

iv) The applications, I.A.No.2633 of 2007 and 2848 of 2007, to accept documents are allowed.

v) I.A.No.1349 of 2004 is dismissed.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

vns/DK.